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| 08/862,039      | 05/22/1997  | DAVID G. BIRD        |                     | 2929             |

7590 02/26/2009  
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| EXAMINER |
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ISSING, GREGORY C

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| ART UNIT | PAPER NUMBER |
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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID G. BIRD

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Appeal 2007-4289  
Application 08/862,039  
Technology Center 3600

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Mailed: February 26, 2009

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Before DALE M. SHAW, *Chief Appeals Administrator*

ORDER DISMISSING APPEAL

This reissue application was electronically received at the Board of Patent Appeals and Interferences on September 6, 2007 and is a reissue of U.S. Patent 5,418,537 (the '537 patent). A docketing notice was mailed and Appeal No. 2007-4289 was assigned on September 11, 2007. A review of the application has revealed that the '537 patent expired as of June 20, 2007 for failure to pay maintenance fees. Accordingly, the appeal of this reissue

Appeal 2007-4289  
Application 08/862,039

application is herewith dismissed. Dismissal of the appeal in this reissue is appropriate pursuant to the following,

The filing of a reissue application does not alter the schedule of payments of maintenance fees on the original patent. If maintenance fees have not been paid on the original patent as required by 35 U.S.C. 41(b) and 37 CFR 1.20, and the patent has expired, no reissue patent can be granted. 35 U.S.C. 251, first paragraph, only authorizes the granting of a reissue patent for the unexpired term of the original patent. Once a patent has expired, the Director of the USPTO no longer has the authority under 35 U.S.C. 251 to reissue the patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993).

*Manual of Patent Examining Procedure* (MPEP) § 1415.01 (8th ed, rev. 7, July 2008).

Accordingly, it is ORDERED that the appeal which was filed on January 24, 2001 be dismissed.

The application is being returned to the Examiner for further action as may be appropriate.

If there are any questions pertaining to this dismissal, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

lae

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